REPORT ON PUBLIC BARGAINING

OVERVIEW

My assignment is to provide Governor Branstad and his executive team with a factual review of the current status of public collective bargaining and the system in which it functions. Because of my forty years of predominately private sector labor negotiations and planning experiences, I am to look at the status and system from the perspective of fresh eyes. In addition, I am going to provide recommendations regarding cost reductions and management control steps that are common in the private sector which are justified by the current stressful economic times. If implemented these adjustments would more align the State's management rights with private enterprise and allow it to manage efficiently in unusual times.

In the process of preparing this report, I have spent time seeking input from the members of PERB, the negotiator for the state executive branch, the negotiator for the Board of Regents, the negotiator for the Judicial Branch, the Attorney General, the head of AFSCME, and key representatives from the DOM and DAS who have been involved in the bargaining process.

In 1974 the Iowa legislature made a policy decision to develop a statutory system to allow public employees to collectively bargain. Other states have made similar policy decisions. States have adopted various procedures to handle bargaining and the all important question of how to obtain a contract when the parties have reached an impasse.

Some states follow the private sector process of allowing a strike with specific areas of safety and health service being denied that alternative. Other states allow the parties to meet and negotiate but reserve the final decisions for either the executive or legislative branch. Some states simply do not address the issue thus leaving public employees as At Will employees. The states contiguous to Iowa follow a variety of methods to resolve an impasse ranging from the right to strike to nonbinding fact finding.

The bottom line is that the way Iowa handles this process is one of many alternatives. I am not addressing which of these procedures is the best practice as that is a policy decision for the legislators. With the few suggestions I later specify, a major over haul may not be necessary

The current collective bargaining procedure in Iowa is administered by the Public Employee Relations Board (PERB). It is made up of three members who are full time salaried employees approved by the Senate after recommendation by the Governor. Their statutory role is to act as a neutral and administer the public employee bargaining system. They handle elections, decertification's, charges of violations of protected rights, and questions of whether a given bargaining issue is mandatory, permissive or illegal.

One of PERB's largest expenditure of time and funds occurs during the bargaining period when their members act as mediators; when that resource is exhausted PERB provides Ad Hoc mediators. The Federal Mediation and Conciliation Service also provide mediators on a free basis when they are available. (This agency, like all others in Federal government, is facing economic challenges and it is always problematic how much assistance the FMCS can provide in a given year.) The Ad Hoc mediators are paid $25 to $35 per hour with a five hour maximum per assignment.

According to PERB's last annual report, mediation occurs in about 50% of the approximately 1200 bargained settlements. By statute, mediation is provided at no costs; however arbitrator's fees are paid by the parties.

PERB also expends a significant portion of time providing an Administrative Law Judge (ALJ) to act as arbitrator for non-contract merit employee grievances. If requested by an appeal of the merit employee, PERB reviews the ALJ's decision De Novo.

Chapter 20 establishes the roadmap for the operation of PERB and the process for collective bargaining. There are three key areas enunciated in Chapter 20: (1) a check list of management rights that are permissive subjects of bargaining, (2) a check list of items that are mandatory subjects of bargaining and (3) the criteria that an arbitrator must consider in reaching a final resolution of an impasse by selecting the better of the two competing offers. The area of what is

mandatory and permissive produced many PERB cases in its early days, however because of the maturity of the statute that volume is on the decline.

STATUS

The State has numerous bargaining units. The AFSCME contract involves seven different units (12600 employees) that negotiate their contracts in unison. The Board of Regents has three contracts and the Judiciary Branch has one. Because of its size and state wide clout AFSCME is the trend setter.

The recent executive branch negotiations commenced in November of 2010 and involved an offer by AFSCME and a quick acceptance. To everyone's shock, no real negotiations occurred. No one has effectively explained why there was such an urgency to settle and deny the incoming Governor the right to negotiate. This was a brilliant move by the union. They obtained a raise much higher than the pattern in the private sector, locked in health insurance benefits that exceed those in the private sector and maintained the current restrictions on management rights for two more years. In addition, they avoided facing the push back certain to be proffered by the next Governor.

The current AFSCME contract that is about to expire June 30, 2011 provided step increases on an employee's anniversary date of 4 ½% and a 0% increase on the contract's first year anniversary date of July 1, 2009. The second year the 4 ½ % step increases were the same and there was a negotiated 2% increase on July 1, 2010 and a 1% increase on January 2011. In summary the wage increases total 12% over the two year term. These costs do not consider the five days negotiated away by the Union for lay-off protections nor the costs of insurance premium increases.

I have not seen the new contract but I am informed it provides for the usual 4 ½% anniversary date steps each of the two year plus across the board increases of 2% on July 1, 2011, 1% on January 1, 2012, 2% on July 1, 2012 and 1% on January 1, 2013. In summary the wage increases are 15% over the two year term. The true impact of these increased rates must be evaluated considering the increase in costs of insurance premiums.

In addition, the impact of any historical practice of passing through such increases to non-union and management employees must be considered. The historical pattern was to pass along these increases. In the 2008- 2009 fiscal year all workers received no annual increases but those who were eligible for the step increases received them. Generally this was also true of the nonunion employees. Exceptions may exist in some agencies or departments where steps were not given or the 4 1/2% level not observed for nonunion employees.

In the 2009-2010 the nonunion employees annual raises and step increases were frozen by Executive Order. The union received the negotiated step increases and a 2% annual increase on July 1.

In late 2009 the Executive Branch was faced with budget challenges and the union negotiated a midterm modification to provide for five unpaid furlough days in 2009 and 2010 in return for guarantees against layoffs. The union, after negotiations with management, entered into a memorandum of understanding (MOU) that provided for five unpaid furlough days which the union contends gave back the 2% annual increase. The MOU contained a guarantee against layoffs in 2010 and allows the furlough days to be used in one hour increments.

Non union workers by Executive Order save up seven furlough days. The reason for the different treatment than the union employees is unknown.

The union believes that it was very cooperative in dealing with the State's budget crisis by not negotiating a raise on July 1, 2009, by giving back the next 2% increase through the furlough days and delaying through the negotiations process the 1% anniversary date contract raise from July 1, 2010 to January 1, 2011. It is difficult to assess the costs of the 2009 MOU as the number of hours of overtime and unemployment benefits incurred are impossible to determine.

The union is correct to the extent that the about to expire agreement is less costly to the State compared to the new contract. It is difficult to understand why the economic settlement two years ago is better than the recent negotiated settlement!!!

The current and future AFSCME contracts define the terms of health insurance coverage in great detail. They require the State to pays the entire

premium for employee health insurance. If the employee elects family coverage, a dollar figure of 85% of the costs of the Wellmark Iowa Select Program 3 Plus PPO plan is calculated. The employee can elect to select that plan and pay the balance or select a plan with lesser coverage, higher deductibles and co-insurance and receive a lower premium. When employees apply the previously mentioned fixed dollar figure to that lesser plan's premium, it will cover the entire family premium. This same arrangement is in effect for the next two years.

The cost from DOM shows the costs for health insurance ranges from $750-$450 for single coverage and $1756-$1055 for family coverage. The costs to the employees for family coverage range from $277-0 depending on the selected plan. All costs of single coverage are paid by the State.

The terms of the health plans are negotiated in depth. Wellmark is the sole provider. I do not know the negotiation history on the purpose for the exclusion of other carriers of the rejection a third party administrator concept. In the private sector the employer would consider all sources of coverage ad all types of plans and methods for cost containment.

The union contracts also require the State to pay all costs for employee life, disability and dental insurance plus 50% of family coverage's premium. They also contain a $75 monthly match for deferred compensation, sick leave accumulation of 1 ½ days per month, a good vacation plan that has a five week maximum and eleven days of annual paid holidays.

The Des Moines Register in November of 2009 reported Iowa was one of six states that provide free insurance to its employees, and the State's costs of insurance had increased over ten years by 300% or $176 million. Citing a study by David P. Lind and Associate, it reported that State workers paid substantially lower out of pocket costs than private sector and other public employers.

In November of 2009 the Public Interest Institute published an in-depth study that showed Iowa public employees had a pay gap of 146% over Iowa private sector comparable employees: $51,700 average wage of public employees to $35,300 for private sector employees. The study also showed Iowa as the number one state in the size of this discrepancy. The Public Interest Institute has

operated since 1989 in Iowa and is supported by a foundation and private contributions.

Even without such a study, it is obvious that the recently negotiated increases are unusually high in light of the high unemployment level, a Presidential call for a two year Federal employee freeze and numerous unionized private employees who are receiving no raise and suffer an increasing participation in insurance costs.

A May 2010 study of the Public Interest Institute referred to a US Department of Labor Statistic's calculations of total public employer costs. It concluded that Iowa with one public worker to each seventy-one citizens was one of the smallest ratios. Low is not good.

This study also provided an in depth study of public employee fringe benefits. It referenced that Iowa was one of six states in which full family premium coverage was available. It also addressed the need for a focus on modifying the public retirement program.

This same study reviewed steps being taken by other States to address the costs of public employees in comparison to the private sector. In New Jersey, Governor Christie with support from Democratic Senator Sweeny pushed through legislation to scale back benefits of NJ public employees. In Indiana, Governor Daniels created the use of Health Savings Account partial funded by the state as an incentive to reduce insurance costs.

A January 11, 2011 New York Times article referenced the new Democratic Governor Cuomo of New York calling for a one year freeze on wages, the new Wisconsin Governor Walker asking for elimination of government workers right to bargain and new Ohio Governor Kasich proposed a dramatic reduction in the rights of state workers to bargain. The article also noted even Jerry Brown, the new Democratic governor or California promised a review of government employee benefits. Union officials reportedly responded that such attitudes are overblown and over reactions.

An unusual aspect of the AFSCME contract is that many of the traditional management rights are covered in great detail. By not directly denying their use

but negotiating restrictions regarding the impact on union members, these rights to manage are severally limited.

Obviously there is a very fine line between negotiations of a permissive management rights subjects and negotiating limitations on its use if it adversely impacts employees. In the current contract, the negotiated provisions regulating the impact on employees severally restrict their usage. For example, the layoff process is lengthy and cumbersome and virtually always protects seniority without consideration of other factors; the right to outsource is nearly forbidden because of the requirement of offering affected employees a job in state government at no reduction in pay ; any change in hours is deemed a layoff and initiates the lengthy cumbersome layoff rules; and seniority is the touchstone of all reductions.

In the future, if these issues are challenged as permissive subjects of bargaining long and costly PERB hearings and subsequent litigation is likely to occur. Recapturing these lost rights to manage through future bargaining efforts is problematic and will be costly because of the way Chapter 20 limits the arbitrator's powers and the fact they are already included in the union contracts.

The current provisions of Chapter 20 defining the arbitrators powers has a general introductory statement but then specifying the issues the arbitrator must consider in resolving an impasse. Two key issues the arbitrator must consider are past contracts between the parties and the terms of comparable public employees. The restrictive provisions on managements rights are contained in the past contracts so the arbitrator will consider that fact. Since AFSCME is the union for many of those comparable public employees, the comparison amounts to comparing the union to itself. (20.22 sec. 9). The deck is stacked against change.

The arbitrator if they abide by the specific factors of Chapter 20 must wear blinders as to what is happening in the private sector. It is questionable if the arbitrator could or would consider events in the private sector; Titan Tire employees froze their pay and absorbed 75% of health insurance costs; the Electrical Union Workers froze their hourly wages for two years and absorbed health insurance costs; and all unionized construction employees in Des Moines last year froze their hourly wage and absorbed the health insurance costs.

The union should not be vilified. The Union has a duty to aggressively represent its members. They have fulfilled that duty extremely well. The State's actions over many years however must be severely criticized for allowing the creation of limitations of management rights, thereby forfeiting its flexibility to address economic challenges, plus creating a wages and benefits that exceed what is found in the private sector.

I will hasten to point out that my criticism of such a performance should not be thrown on the door steps of the spokesperson or bargaining team as they merely carry out the direction of top management. No one can look good in such a situation where their powers are curtailed; they can only play the hands they are dealt.

RECOMMENDATIONS ON PERB DUTIES

PERB has two board members in place with terms that expire in 2012 and 2014. I would save the cost of a third board member for a while and attempt to redefine PERB'S duties. By statutory change, I would recommend that PERB be allowed to charge fees for each request for a list of mediators and arbitrators and any training it provides. I would amend Chapter 20 regarding mediation to direct PERB to first use its own staff and Federal Mediators, if available, to handle the crunch of mediation, and once that resource is exhausted, to provide the parties with an approved list of available ad hoc mediators and their fee structure. The parties can then select their neutral mediator and will be responsible for their costs and expenses.

This statutory change removes a significant cost and duty from PERB. The most recent PERB reports show that last year approximately 600 of the 1200 bargaining units used mediation. The costs would be shifted to the actual users and would be a savings on the State's budget. The fact that the State provides a free mediator at a very substandard rate for a maximum of five hours does not serve anyone properly. If the mediators were paid a reasonable rate more professional mediators would be attracted. The elimination of a five hour maximum would help settlement as five hours barely allows the mediator to get the issues sorted out. This would align mediation services with arbitrations services where the parties split the costs.

I would also statutorily change Chapter 8A which deals with non-union merit pay employees. These employees are allowed the right to grieve and the definition is not well defined. Arguably this right is broader than the grievance rights in union agreements. I would limit the grievances to discipline, salary reduction, and denial of fringe benefit. (8A.415). I would also make the PERB'S ALJ's decision final and binding like any other arbitrators decisions. (8A.415) This lifts the repetitive burden of a De Novo review by PERB and allows a resort to the court only for the normal reasons to appeal an arbitrator's decision.

This later change also relieves PERB from more duties and aligns the grievance process with the union's grievance process. Future changes in PERB's structure can be made after the chance to function without these duties. I would also admonish PERB to continue to stress that it is a neutral agency and does not represent either party's interest. Even the slightest doubt of this neutrality diminishes its effectiveness.

RECOMMENDATIONS ON CHAPTER 20 BARGAINING STRUCTURE

The reality is that the balance between the unions duty to represent its people and managements obligation to represent its constituency, the taxpayer, has become out of balance over many years.

The wage structure needs to be more aligned with the private sector. The health benefit plan needs addressed creatively. Management has negotiated severe limitations of management rights that deny it the ability to adjust to changing times in a nimble fashion. The likelihood of resolving all such issues by negotiations or arbitration is problematic as they are now in the contract and Chapter 20 virtually assures maintaining the status quo.

The following legislative action should be made as soon as possible to facilitate planning, defining the future bargaining platform, expedite the health insurance restructuring and to facilitate the costs savings in the reduction of PERB's duties. To the extent any changes may clash with the union agreements, the union agreements would be honored.

(1) I would suggest Chapter 20.22. 9 be revised to eliminate the obligation to consider past contracts between the parties. Why command adherence to status quo? That never happens in the private sector. Such a restriction by an enunciated factor is nonexistent in surrounding state's impasse process. Why would Iowa have such a standard except to perpetuate the status quo?

(2) I would amend these provisions to allow the arbitrator to consider comparable data regarding "public employees not represented by a union and private sector employees" as an addition to considering only "other public employees." This would allow the arbitrator to look at the entire spectrum of facts at a given time without being restricted to a bizarre standard of comparing Union proposals to other public employer's Union contracts which the same Union also often negotiates.

My cursory review of the statutes of states contiguous to Iowa makes it clear that Iowa is one of the more restrictive states on what an arbitrator may consider. Indiana allows the arbitrator to consider private sector comparable wages. South Dakota does not limit the subjects to be considered. Wisconsin directs a consideration of the public interest in efficiency and economical government. Nebraska references its internal established prevailing wage rates for people of comparable skills which includes the private sector. Minnesota has broad language referencing efficient management. Illinois specifically references considering the private sector.

(3) I would suggest also adding some broad language the arbitrator to consider "efficiency, increase in taxes and decrease in service". Such language is common in surrounding states statutes. Why should Iowa so limit the arbitrator?

(4) I would also add a fail-safe provision to Chapter 20. If the arbitrator or the parties arrive at a provision that the Executive Branch or Legislative Branch feels is unacceptable it can be rejected. The standard for the exercise of this right needs to be defined. One possibility is if the provision "could not be supported by the budget without new taxation or curtailment in services". Such a fail-safe provision would avoid the State being saddled with provisions that are unreasonable in light of the State's interest.

(5) Chapter 20.9 defines management rights and in the last sentence makes all retirement systems excluded subjects of bargaining. The rationale apparently was that this system impacts the entire spectrum of State employees and should not be the subject of alteration by the bargaining process. It seems strange that this same rationale was not applied to Health and all other insurance benefits. The current union contract goes into extreme detail defining the provisions of health insurance terms and limits the choice to Wellmark products .

I would suggest that provisions of Chapter 20 excluding certain subjects from the bargaining process be expanded to include (a) the terms and source of health and other insurance, (b) any restriction or limitation on outsourcing, (c) any provision that denies the State the right to consider other factors such as skill, training or education as well as seniority in a layoff and (d) any provision that obligates the state to pay in excess of a fixed % of any employees insurance premiums.

Insurance has become an incredibly complex area. The State, whether it be via the legislature, the Governor or the Insurance Department, should have the freedom to evaluate the best coverage for the dollars spent. It should be able to provide an insurance plan that applies to all public employees and strikes a balance between fair coverage and taxpayer costs. It should be able to freely and flexibly investigate alternative coverage or additional providers through the use of local and national experts. All of these considerations are now handled with the negotiations with AFSCME.

Why would the State want to give up this crucial right to the parties in the bargaining process? Why should the bargaining process dictate who is the sole carrier (Wellmark) to the exclusion of other carriers? Why should that process define the terms and choices available to all public employees? Why should the current process forfeit control of the complex issues of health coverage alternatives to the exclusion of local and national experts who can provide creative and periodic adjustments to the field as needed?

The aforementioned non-insurance exclusions from Chapter 20 bargaining are also crucial. They would reinstate significant and lost rights of the State in the Human Relations (HR) area to act in a nimble fashion to economic changes. The

current situation finds the State in the HR area with few alternatives other than deep permanent layoffs and periodic temporary layoffs to address a budget crisis and the increased costs of the new union contracts. The level of services provided by the State obviously will be impacted and altered.

I am mindful of the fact that there are many other issues beyond HR that impact costs and savings which must be addressed by a new Governor and legislature. However my task is to focus on this area. In no way am I suggesting the HR area is the only area of focus in this challenge.

OTHER STATUTORY ISSUES

Senate file 2855 places a ration of 1-15 between management and employees and mandates middle management layoffs to maintain that ratio. AFSCME contends they would go for a higher number as they want less management. I do not understand the history of this legislation and why the legislature would want to pass a bill that micro manages traditional management rights. I would eliminate it.

ECONOMIC RECOMMENDATIONS

In my efforts of evaluating the status of State Employee bargaining, I have not attempted to address non-employee related potential areas of change that may produce costs savings for the state. The business of running a state is big business and is very complicated. However the mood of the nation is clearly becoming one of change from big government to effective efficient government. Responding to such a mood cannot be accomplished by minor changes. Sweeping changes in government management issues need to be evaluated.

The economic steps relating to adjusting the personal costs of operating the State are;

(1) AFSCME and all other unions need to be approached as to a voluntary adjustment in these raises. I would not place much hope in this approach as the unions will, as in the past, attempt to trade savings for other economic protections and contract advantages. With an uncertain future, I could not recommend the State agree to more restrictions on its options.

(2) A determination needs made regarding following the historical practice of passing along the AFSCME negotiated raises to unrepresented employees. In the 2010-2011 period nonunion employees wages including steps were frozen , and in certain agencies they have been frozen for multiple years. The Union wage steps were not frozen, however and they content their 2% annual increase was returned in the form of five furlough days Clearly the non-union public employees were treated in a despaired fashion.

If such new raises for 2011-2013 are passed along this will add future stress to the budget. If the conclusion is that these raises are extreme in light of the private sector, the budget and other states actions, passing them along increases the costs of a wrong decision in granting such unusually large increases in troubled times.

This may be the right time to start establishing a wage increase and benefit plan that is more aligned with the private sector with a small raise without steps (as not all employees receive steps) and establishing a percentage of contribution towards health care. This obviously would set the stage for the same treatment of union workers when their contracts expire. Since the impacted non-contract employees were treated in a despaired fashion from the union employees by the past Executive order, this results does not feel good from a human point of view even if it is good business. There is no clearly right answer.

(3) All areas of operations need to be critically examined as to how to downsize even if it means reduced service. Management is not exempt. This inquiry needs to focus on all employees whether they are union, nonunion and/or management.

(4) A calculation needs made as to the costs of all new raises and a determination made regarding the level of permanent layoffs and temporary layoffs necessary to recoup at least that amount from union and all other employees. The layoffs must be done with good business judgment not with sweeping unfocused efforts. Not all areas can or should be cut. Some areas may even justify increased staffing. I would urge swift and deep cuts should be made to meet the needs of the budget.

(5) Outsourcing needs studied to determine if the cost savings by turning to the private sector would off-set the contractual obligation of finding the impacted employees jobs in state government with no reduction in pay. If the proposed Chapter 20 changes are adopted this avenue may be an important step in right sizing government by resort to the private sector and a competitive environment.

(6) A study is needed as to the overtime practices in various departments of the State and except in situations involving safety and health overtime must be severely curtailed.

OTHER STEPS TO CONSIDER IN RIGHT SIZING GOVERNMENT

An evaluation needs made as to whether the HR area in DAS is right sized and dedicated to preserving management rights. This study needs to include the issue of whether the DAS's HR rules are effective or do they actually limited nimble management action.

A study needs made as to whether segments of government have kept their own HR function to the exclusion of centralized HR from DAS? Are there further savings involved in more centralization? Are there any redundancies between the DAS HR function and the Regents HR function?

Would the costs of school, county and municipal bargaining be reduced by formation of employer associations for bargaining a master agreement for large areas? By way of example why use three hundred labor consultants for school bargaining when five or ten would suffice? An added benefit is that better coordination should result from this process. Formation of such associations could be done voluntarily, but it also could be statutorily mandated in order to speed the process. Clearly this would provide cost savings but it would be a significant change in concept in the name of efficiency.

The State should establish a process for collection of labor relations data and trends from contiguous midwestern states and local comparable school, municipal and county bargaining units. This data is assembled by the unions. The state could find it useful in determining trends and in preparing for arbitrations.

CONCLUSIONS

The changes to the duties of PERB are not onerous. They pass user costs on to the users and reduce the services provided by this entity.

Senate file 2855 needs to be revised or rescinded. Why would the legislature want to be involved in such micro-management issues?

The changes to Chapter 20 are crucial to changing from the existing situation . Management needs to regain its lost rights to act in a flexible fashion to deal with public issues. The arbitrators powers need expanded to considering all the relevant factors including private sector realities and away from a system that is structured to maintaining the status quo.

The costly complex area of health and related insurance needs to be removed from the bargaining system, just like IPERS. Without such a change the access to new cost saving methods, new providers, new competition, outside experts and multiple and varied coverage plans is forfeited to the bargaining process. The chance to attacking health care issues with the best people and fresh alternatives will be left to the bargaining process with all its limitations. This results is not in the best interest of the taxpayers of Iowa.